



## FULBRIGHT & JAWORSKI L.L.P.

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August 9, 2004

### CERTIFICATE OF MAILING 37 C.F.R. 1.8

I certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: MS MISSING PARTS, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date below:

August 9, 2004

Date

  
Robert E. Hanson

### MS MISSING PARTS

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

RE: *U.S. Patent Application No. 10/804,589 entitled "PLANTS AND SEEDS OF VARIETY 1900420" – Marvin L. Boerboom*  
*Our reference: DEKA:327US*  
*Client reference: 34-63(51684)*

Sir:

Please find enclosed:

- (1) A copy of the Petition to Accord Filing Date and Response to Notice of Incomplete Nonprovisional Application Filed Under 37 C.F.R. § 1.53(b) mailed June 9, 2004;
- (2) Declaration;
- (3) Copy of Notice of Incomplete Nonprovisional Application Filed Under 37 C.F.R. § 1.53(b);
- (4) Check in the amount of \$1610.00; and
- (5) A return postcard to acknowledge receipt of these materials. Please date stamp and mail this postcard.

25418617.1

Commissioner for Patents

August 9, 2004

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If the check is inadvertently omitted, or the amount is insufficient, or should any additional fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to the enclosed materials, or should an overpayment be included, the Commissioner is authorized to deduct or credit the appropriate fees from or to Fulbright & Jaworski Deposit Account No.: 50-1212/DEKA:327US.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. E. Hanson', written over a horizontal line.

Robert E. Hanson  
Reg. No. 42,628

REH/mar

Encl.: as noted



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:  
Marvin L. Boerboom

Serial No.: 10/804,589

Filed: March 19, 2004

For: PLANTS AND SEEDS OF VARIETY  
I900420

Group Art Unit: Unknown

Examiner: Unknown

Atty. Dkt. No.: DEKA:327US

CERTIFICATE OF MAILING  
37 C.F.R. 1.8

I certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: MS PETITIONS, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date below:

August 9, 2004

Date

Robert E. Hanson

**I. PETITION UNDER 37 C.F.R. 1.53(e)(2) TO ACCORD FILING DATE AND**  
**II. RESPONSE TO NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION**  
**FILED UNDER 37 C.F.R. 1.53(B)**

**OFFICE OF PETITIONS**

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

Sir:

In response to the Notice of Incomplete Nonprovisional Application Filed Under 37 C.F.R. § 1.53(b), dated June 9, 2004, Applicant hereby petitions under 37 C.F.R. 1.53(e)(2) for the office to accord a filing date of March 19, 2004, pursuant to 37 C.F.R. 1.53(b), and provide herewith the items requested in the Notice.

**I. PETITION**

In support hereof Applicant provides the following information:

Applicant filed the instant application on March 19, 2004. A Notice of Incomplete Nonprovisional Application Filed Under 37 C.F.R. § 1.53(b) was mailed June 9, 2004, indicating that a filing date was not accorded to the referenced nonprovisional application for a failure to supply the drawings.

In response, Applicants note that the application was deposited without drawings because drawings are **not necessary for an understanding of the patented subject matter under 35 U.S.C. §113**. Applicants additionally respectfully note that under M.P.E.P. §608.02, an OIPE formality examiner should **not** treat an application without drawings as incomplete for a filing date under 35 U.S.C. § 111 and § 113 if the application contains:

(A) at least one process claim including the term "process" or "method" in its introductory phrase;

The current application includes at least one process claim and therefore the Notice was improperly issued for this additional reason.

Withdrawal of the Notice of Incomplete Provisional Application is requested in view of the foregoing. Pursuant to 37 C.F.R. § 1.17(h), a check in the amount of \$130.00 is enclosed in payment of the appropriate fee for this petition.

Applicants have therefore shown compliance with the requirements of 37 C.F.R. §1.53(b) in the instant application and respectfully request the office to accord a filing date of March 19, 2004, and to refund the amount of the petition fee of \$130.00 to Fulbright & Jaworski Deposit Account No. 50-1212/DEKA:327US.

## **II. RESPONSE TO NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION FILED UNDER 37 C.F.R. 1.53(b)**

In response to the Notice to File Missing Parts of Nonprovisional Application Under 37 C.F.R. § 1.53(b), dated June 9, 2004, there are enclosed herewith:

(a) Declaration executed on behalf of Marvin L. Boerboom;

- (b) Our check in the amount of \$1610.00 to cover the basic filing fee (\$770.00 - utility large entity); surcharge for late filing (\$130.00); additional claims fee (\$710.00); and
- (c) A copy of Notice to File Missing Parts of Nonprovisional Application Filed Under 37 C.F.R. 1.53(b)-Filing Date Granted.

An Assignment to Monsanto Technology, L.L.C. and a check for \$40.00 are being filed under separate cover.

If the check is inadvertently omitted, or should any additional fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to the enclosed materials, or should an overpayment be included herein, the Commissioner is authorized to deduct or credit said fees from or to Fulbright & Jaworski Deposit Account No.: 50-1212/DEKA:327US.

Please date stamp and return the accompanying postcard to evidence receipt of these documents.

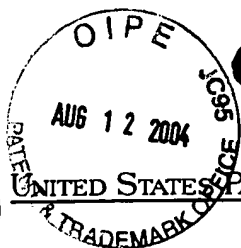
Respectfully submitted,



Robert E. Hanson  
Reg. No. 42,628  
Attorney for Applicant

FULBRIGHT & JAWORSKI L.L.P.  
600 Congress Avenue, Suite 2400  
Austin, Texas 78701  
(512) 474-5201

Date: August 9, 2004



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
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 www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/804,589	03/19/2004	Marvin L. Boerboom	DEKA:327US

CONFIRMATION NO. 7271

## FORMALITIES LETTER



\*OC000000012910689\*

32425  
 FULBRIGHT & JAWORSKI L.L.P.  
 600 CONGRESS AVE.  
 SUITE 2400  
 AUSTIN, TX 78701

Date Mailed: 06/09/2004

## NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION

## FILED UNDER 37 CFR 1.53(b)

A filing date has NOT been accorded to the above-identified application papers for the reason(s) indicated below.

All of the items noted below and a newly executed oath or declaration covering the items must be submitted within **TWO MONTHS** of the date of this Notice, unless otherwise indicated, or proceedings on the application will be terminated (37 CFR 1.53(e)). Replies should be mailed to: Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

The filing date will be the date of receipt of all items required below, unless otherwise indicated. Any assertions that the item(s) required below were submitted, or are not necessary for a filing date, must be by way of petition directed to the attention of the Office of Petitions accompanied by the \$130.00 petition fee (37 CFR 1.17(h)). If the petition states that the application is entitled to a filing date, a request for a refund of the petition fee may be included in the petition. Petitions should be mailed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

- The application was deposited without drawings. 35 U.S.C. 113 (first sentence) requires a drawing "where necessary for the understanding of the subject matter sought to be patented." *Applicant should reconsider whether the drawings are necessary under 35 U.S.C. 113 (first sentence).*
- The statutory basic filing fee is missing.  
*Applicant must submit \$ 530 to complete the basic filing fee for a non-small entity. If appropriate, applicant may make a written assertion of entitlement to small entity status and pay the small entity filing fee (37 CFR 1.27).*
- The oath or declaration is missing.  
*A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.*

**SUMMARY OF FEES DUE:**

Total additional fee(s) required for this application is \$530 for a Large Entity

08/13/2004 FFANAIA2 00000051 10804589  
 01 FC:1001 770.00 OP  
 02 FC:1051 130.00 OP  
 03 FC:1201 602.00 OP  
 04 FC:1202 108.00 OP

- \$530 Statutory basic filing fee.

37

Replies should be mailed to: Mail Stop Missing Parts  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

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*A copy of this notice **MUST** be returned with the reply.*

*Freeman*

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Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE